House Bill 872

By: Representatives Shaw of the 176<sup>th</sup>, Smith of the 131<sup>st</sup>, Brockway of the 101<sup>st</sup>, Ramsey of the 72<sup>nd</sup>, Watson of the 163<sup>rd</sup>, and others

## A BILL TO BE ENTITLED AN ACT

1	To amend Article 14 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated
2	relating to secondary metals recyclers, so as to provide for the comprehensive revision of
3	provisions regarding secondary metals recyclers; to provide for definitions, procedures
4	conditions, and limitations relating to the buying of secondary metal property; to provide for
5	powers, duties, and authority of sheriffs and other law enforcement officers; to provide for
6	permits and fees; to provide for a state-wide data base; to provide for criminal offenses and
7	penalties; to amend Code Section 40-3-36 of the Official Code of Georgia Annotated
8	relating to cancellation of certificate of title for scrap, dismantled, or demolished vehicles
9	salvage certificate of title, administrative enforcement, and removal of license plates, so as
10	to revise certain provisions relating to the use of a form to transfer title to a motor vehicle to

## BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

be sold or disposed of as scrap metal or parts, subject to a contingency; to provide for related

matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

14 **PART I**15 **SECTION 1-1.** 

- Article 14 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to secondary metals recyclers, is amended by revising Code Section 10-1-350, relating to definitions, as follows:
- 19 "10-1-350.

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- As used in this article, the term:
- 21 (1) 'Ferrous metals' means any metals containing significant quantities of iron or steel.
- 22 (2) <u>'Fixed site' means any site occupied by a secondary metals recycler as the owner of</u>
- 23 the site or as a lessee of the site under a lease or other rental agreement providing for
- 24 <u>occupation of the site by a secondary metals recycler for a total duration of not less than</u>
- 25 <u>364 days or as owner of such site.</u>

26 (3) 'Law enforcement officer' means any duly constituted peace officer of the State of

- 27 Georgia or of any county, municipality, or political subdivision thereof.
- 28 (3)(4) 'Nonferrous metals' means stainless steel beer kegs and metals not containing
- significant quantities of iron or steel, including, without limitation, copper, brass,
- aluminum, bronze, lead, zinc, nickel, and alloys thereof.
- 31 (4)(5) 'Person' means an individual, partnership, corporation, joint venture, trust,
- 32 association, and any other legal entity.
- 33 (5)(6) 'Personal identification card' means a current and unexpired driver's license or
- identification card issued by the Department of Driver Services or a similar card issued
- 35 by another state, a military identification card, or an appropriate work authorization
- issued by the U.S. Citizenship and Immigration Services of the Department of Homeland
- 37 Security, which shall contain the individual's name, address, and photograph.
- 38 (6)(7) 'Purchase transaction' means a transaction in which a secondary metals recycler
- 39 gives consideration in exchange for regulated metal property.
- 40 (7)(8) 'Regulated metal property' means any item composed primarily of any ferrous
- 41 <u>metals and nonferrous metals</u>, but shall not include aluminum beverage containers, used
- beverage containers, or similar beverage containers.
- 43 (8)(9) 'Secondary metals recycler' means any person who is engaged, from a fixed
- 44 location site or otherwise, in the business in this state of paying compensation for ferrous
- or nonferrous metals that have served their original economic purpose, whether or not
- 46 engaged in the business of performing the manufacturing process by which ferrous metals
- or nonferrous metals are converted into raw material products consisting of prepared
- 48 grades and having an existing or potential economic value."

49 **SECTION 1-2.** 

- 50 Said article is further amended by revising Code Section 10-1-351, relating to record of
- 51 transactions, as follows:
- 52 "(a) A secondary metals recycler shall maintain a legible record of all purchase
- transactions to which such secondary metals recycler is a party. Such record shall include
- the following information:
- 55 (1) The name and address of the secondary metals recycler;
- 56 (2) The date of the transaction;
- 57 (3) The weight, quantity, or volume and a description of the type of regulated metal
- property purchased in a purchase transaction. For purposes of this paragraph, the term
- 59 'type of regulated metal property' shall include a general physical description, such as
- wire, tubing, extrusions, or castings;

61 (4) <u>A digital photograph or photographs of the regulated metal property which shows the</u>

- 62 <u>regulated metal property in a clear, undistorted manner;</u>
- 63 (5) The amount of consideration given in a purchase transaction for the regulated metal
- 64 property;
- 65  $\frac{(5)(6)}{(5)}$  A signed statement from the person receiving consideration in the purchase
- transaction stating that he or she is the rightful owner of the regulated metal property or
- is entitled to sell the regulated metal property being sold;
- 68 (6)(7) A photocopy scanned or photocopied copy of a valid personal identification card
- of the person delivering the regulated metal property to the secondary metals recycler;
- 70  $\frac{7}{(8)}$  The distinctive number from, and type of, the personal identification card of the
- person delivering the regulated metal property to the secondary metals recycler; and
- 72 (8)(9) The vehicle license tag number, state of issue, and the type of vehicle, if available,
- used to deliver the regulated metal property to the secondary metals recycler. For
- purposes of this paragraph, the term 'type of vehicle' shall mean an automobile, pickup
- 75 truck, van, or truck; and
- 76 (10) A scanned or photocopied copy of the permit issued by the sheriff pursuant to Code
- 77 <u>Section 10-1-359</u>.
- 78 (b) A secondary metals recycler shall maintain or cause to be maintained the information
- required by subsection (a) of this Code section for not less than two years from the date of
- 80 the purchase transaction. <u>In addition, all of the information required by subsection (a) of</u>
- 81 this Code section, except for the scanned or photocopied copy of the permit specified in
- 82 paragraph (10) of subsection (a) of this Code section, shall be provided to the sheriff of the
- 83 county from which the secondary metals recycler has received the permit under Code
- 84 Section 10-1-359. The sheriff shall place or cause to be placed such information in the data
- 85 <u>base established under Code Section 10-1-359.</u>
- 86 (c) When the metal being purchased is a motor vehicle, the person offering to sell the
- 87 motor vehicle to a secondary metals recycler shall either provide the title to such motor
- vehicle or fully execute a cancellation of certificate of title for scrap vehicles statement on
- 89 <u>a form as promulgated by the Department of Revenue, Motor Vehicle Division, designated</u>
- 90 as MV-1SP, in accordance with Code Section 40-3-36. The secondary metals recycler
- shall forward the title or MV-1SP form to the Department of Revenue within 72 hours of
- 92 receipt of the title or form."

93 **SECTION 1-3.** 

- 94 Said article is further amended by revising Code Section 10-1-352.1, relating to payment by
- 95 recyclers for copper property, catalytic converters, or aluminum property, as follows:

- 96 "10-1-352.1.
- 97 (a) As used in this Code section, the terms:
- 98 (1) 'Aluminum property' means aluminum forms designed to shape concrete.
- 99 (2) 'Copper property' means any copper wire, copper tubing, copper pipe, or any item 100 composed completely of copper.
- 101 (b) A secondary metals recycler may pay by check or by cash for any copper property, 102 catalytic converter, or aluminum property as follows:
- 103 (1) Cash payments shall occur no earlier than 24 hours after the copper property, 104 catalytic converter, or aluminum property is provided to the secondary metals recycler;

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- (2) Checks shall be payable only to the person named who was recorded as delivering the copper property, catalytic converter, or aluminum property to the secondary metals recycler; provided, however, that if such person is delivering the copper property, catalytic converter, or aluminum property on behalf of a governmental entity or a nonprofit or for profit business, the check may be payable to such business or entity and may also be transmitted to such business or entity.
- 112 (c) The provisions of this Code section shall not apply to any transaction between business 113 entities.
- 114 (a) A secondary metal recycler shall not enter into any cash transactions in payment for
- 115 the purchase of nonferrous metals property.
- 116 (b) Payment shall be made by check issued to the seller of the metal, made payable to the
- 117 name and address of the seller and mailed to the recorded address of the seller, or by
- 118 electronic funds transfer.
- 119 (c) Payment shall not be made for a period of 15 days after the purchase transaction."

**SECTION 1-4.** 120

- Said article is further amended by revising Code Section 10-1-357, relating to penalties for 121
- violations, to read as follows: 122
- "10-1-357. 123

- 124 (a) Any person selling regulated metal property to a secondary metals recycler in violation
- of any provision of this article shall be guilty of a misdemeanor unless the value of the 125
- regulated metals metal property, in its original and undamaged condition, in addition to any 126
- 127 costs which are, or would be, incurred in repairing or in the attempt to recover any property
- damaged in the theft or removal of such regulated metal property, is in an aggregate 128
- amount which exceeds \$500.00, in which case such person shall be guilty of a felony and, 130 upon conviction, shall be punished by a fine of not more than \$5,000.00 or by
- 131 imprisonment for not less than one nor more than five years, or both.

(b) Any secondary metals recycler knowingly and intentionally engaging in any practice which constitutes a violation of this article shall be guilty of a misdemeanor unless the value of the regulated metals metal property, in its original and undamaged condition, in addition to any costs which are, or would be, incurred in repairing or in the attempt to recover any property damaged in the theft or removal of such regulated metal property, is in an aggregate amount which exceeds \$500.00, in which case such secondary metals recycler shall be guilty of a felony and, upon conviction, shall be punished by a fine of not more than \$5,000.00 or by imprisonment for not less than one nor more than five years, or both. Any person who buys or sells regulated metal property in violation of any provision of this article shall be liable to any person who was the victim of a crime involving such regulated metal property for the full value of the regulated metal property and any repairs and related expense necessitated by the crime, plus court costs and reasonable attorney's fees."

**SECTION 1-5.** 

146 Said article is further amended by revising Code Section 10-1-358, relating to the

superseding nature of said article, to read as follows:

148 "10-1-358.

149 The General Assembly finds that <u>although</u> this article is a matter of state-wide concern,

local regulation may nonetheless be appropriate in order to enhance further the ability of

151 <u>law enforcement personnel to perform their duties</u>. This article supersedes and preempts

152 all Consequently, this article shall be supplementary to local regulation and shall not

supersede or preempt any rules, regulations, codes, ordinances, and other laws adopted by

any county, municipality, consolidated government, or other local governmental agency

regarding the sale or purchase of regulated metal property."

**SECTION 1-6.** 

157 Said article is further amended by adding a new Code section to read as follows:

158 "<u>10-1-359.</u>

(a) Each secondary metals recycler shall obtain from the sheriff of each county in which such secondary metals recycler's fixed sites are located a permit to purchase nonferrous metals. The sheriff shall issue the permit to the secondary metals recycler if the secondary metals recycler has a fixed site located in the sheriff's county and declares on a form provided by the sheriff that he or she is informed of and will comply with the provisions of this article. The sheriff shall keep a record of all permits issued pursuant to this subsection containing, at a minimum, the date of issuance and the name and address of the permit holder. Such records shall be entered into an electronic data base accessible state

wide. Such data base shall be established through coordination with the Georgia Bureau

- of Investigation and shall be searchable by all law enforcement officers in this state. The
- sheriff shall be authorized to assess a reasonable permit fee on the issuance of each permit
- for the purpose of establishing and maintaining the data base. Each permit shall be valid
- 171 <u>for 12 months.</u>
- (b) It shall be unlawful to purchase nonferrous metals in any amount for the purpose of
- 173 recycling the nonferrous metals unless the purchaser is a secondary metals recycler who
- has a valid permit to purchase nonferrous metals issued pursuant to subsection (a) of this
- 175 <u>Code section.</u>
- (c) Any person convicted of violating any provision of subsection (b) of this Code section
- shall be guilty of a misdemeanor of a high and aggravated nature. Each violation shall
- constitute a separate offense.
- 179 (d) The provisions of this Code section shall not apply to the purchase or sale of aluminum
- 180 <u>cans.</u>"

181 **SECTION 1-7.** 

- 182 Code Section 40-3-36 of the Official Code of Georgia Annotated, relating to cancellation of
- certificate of title for scrap, dismantled, or demolished vehicles, salvage certificate of title,
- 184 administrative enforcement, and removal of license plates, is amended by revising
- paragraphs (2) and (3) of subsection (a) as follows:
- 186 "(2) Notwithstanding any other provision of this article to the contrary, if the owner or
- authorized agent of the owner has not obtained a title in his or her name for the vehicle
- to be transferred, or has lost the title for the vehicle to be transferred, he or she may sign
- a statement swearing that, in addition to the foregoing conditions, the vehicle is worth
- \$850.00 or less and is at least 12 model years old. The statement described in this
- paragraph may be used only to transfer such a vehicle to a <u>secondary metals recycler</u>
- 192 <u>under Code Section 10-1-351, a</u> licensed used motor vehicle parts dealer under Code
- Section 43-47-7, or <u>a licensed</u> scrap metal processor under Code Section 43-43-1. The
- department shall promulgate a form for the statement which shall include, but not be
- limited to:
- (A) A statement that the vehicle shall never be titled again; it must be dismantled or
- scrapped;
- 198 (B) A description of the vehicle including the year, make, model, vehicle identification
- number, and color;
- (C) The name, address, and driver's license number of the owner;
- 201 (D) A certification that the owner:
- 202 (i) Never obtained a title to the vehicle in his or her name; or

- 203 (ii) Was issued a title for the vehicle, but the title was lost or stolen;
- (E) A certification that the vehicle:
- 205 (i) Is worth \$850.00 or less;

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- (ii) Is at least 12 model years old; and
- 207 (iii) Is not subject to any secured interest or lien;
- 208 (F) An acknowledgment that the owner realizes this form will be filed with the department and that it is a felony, punishable by imprisonment for not fewer than one nor more than three years or a fine of not less than \$1,000.00 nor more than \$5,000.00,
- or both, to knowingly falsify any information on this statement;
- (G) The owner's signature and the date of the transaction;
- 213 (H) The name, address, and National Motor Vehicle Title Information System identification number of the business acquiring the vehicle;
- 215 (I) A certification by the business that \$850.00 or less was paid to acquire the vehicle; 216 and
- 217 (J) The business agent's signature and date along with a printed name and title if the agent is signing on behalf of a corporation.
- 219 (3) The <u>secondary metals recycler</u>, used motor vehicle parts dealer, or scrap metal 220 processor shall mail or otherwise deliver the statement required under paragraph (2) of 221 this subsection to the department within 72 hours of the completion of the transaction, 222 requesting that the department cancel the Georgia certificate of title and registration."

223 **PART II**224 **SECTION 2-1.** 

Code Section 40-3-36 of the Official Code of Georgia Annotated, as amended by Section 21(b) of Ga. L. 2011, p. 355, relating to cancellation of certificate of title for scrap,

dismantled, or demolished vehicles, salvage certificate of title, administrative enforcement,

and removal of license plates, is amended by revising paragraphs (2) and (3) of subsection

229 (a) as follows:

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"(2) Notwithstanding any other provision of this article to the contrary, if the owner or authorized agent of the owner has not obtained a title in his or her name for the vehicle to be transferred, or has lost the title for the vehicle to be transferred, he or she may sign a statement swearing that, in addition to the foregoing conditions, the vehicle is worth \$850.00 Or less and is at least 12 model years old. The statement described in this paragraph may be used only to transfer such a vehicle to a licensed used motor vehicle parts dealer under Code Section 43-47-7 or scrap metal processor under Code Section

237 43-43-1. The department shall promulgate a form for the statement which shall include,

- but not be limited to:
- (A) A statement that the vehicle shall never be titled again; it must be dismantled or
- scrapped;
- (B) A description of the vehicle including the year, make, model, vehicle identification
- number, and color;
- (C) The name, address, and driver's license number of the owner;
- (D) A certification that the owner:
- (i) Never obtained a title to the vehicle in his or her name; or
- 246 (ii) Was issued a title for the vehicle, but the title was lost or stolen;
- 247 (E) A certification that the vehicle:
- 248 (i) Is worth \$850.00 or less;
  - (ii) Is at least 12 model years old; and
- 250 (iii) Is not subject to any secured interest or lien;
- 251 (F) An acknowledgment that the owner realizes this form will be filed with the
- department and that it is a felony, punishable by imprisonment for not fewer than one
- nor more than three years or a fine of not less than \$1,000.00 nor more than \$5,000.00,
- or both, to knowingly falsify any information on this statement;
- 255 (G) The owner's signature and the date of the transaction;
- 256 (H) The name, address, and National Motor Vehicle Title Information System
- identification number of the business acquiring the vehicle;
- 258 (I) A certification by the business that \$850.00 or less was paid to acquire the vehicle;
- 259 and

- 260 (J) The business agent's signature and date along with a printed name and title if the
- agent is signing on behalf of a corporation.
- 262 (3)(A) The <u>secondary metals recycler</u>, used motor vehicle parts dealer, or scrap metal
- processor shall mail or otherwise deliver the statement required under paragraph (2) of
- 264 this subsection to the department within 72 hours of the completion of the transaction,
- requesting that the department cancel the Georgia certificate of title and registration.
- 266 (B) Notwithstanding the requirement to mail or otherwise deliver the statement
- required under paragraph (2) of this subsection to the department, the department shall
- provide a mechanism for the receipt of the information required to be obtained in the
- statement by electronic means, at no cost to the <u>secondary metals recycler</u>, used motor
- vehicle parts dealer, or scrap metal processor, in lieu of the physical delivery of the
- statement, in which case the <u>secondary metals recycler</u>, used motor vehicle parts dealer,
- or scrap metal processor shall maintain the original statement for a period of not less
- than two years.

(C) Within 48 hours of each day's close of business, the <u>secondary metals recycler</u>, used motor vehicle parts dealer, or scrap metal processor who purchases or receives motor vehicles for scrap or for parts shall deliver in a format approved by the department, either by facsimile or by other electronic means to be made available by the department by January 1, 2012, a list of all such vehicles purchased that day for scrap or for parts. That list shall contain the following information:

- (i) The name, address, and contact information for the reporting entity;
- (ii) The vehicle identification numbers of such vehicles;
- (iii) The dates such vehicles were obtained;

- (iv) The names of the individuals or entities from whom the vehicles were obtained, for use by law enforcement personnel and appropriate governmental agencies only;
  - (v) A statement of whether the vehicles were, or will be, crushed or disposed of, or offered for sale or other purposes;
  - (vi) A statement of whether the vehicle is intended for export out of the United States; and
    - (vii) The National Motor Vehicle Title Information System identification number of the business acquiring the vehicle.
  - There shall be no charge to either a secondary metals recycler, used motor vehicle parts dealer, or scrap metal processor associated with providing this information to the department.
  - (D) For purposes of this subsection, the term 'motor vehicle' shall not include a vehicle which has been crushed or flattened by mechanical means such that it is no longer the motor vehicle as described by the certificate of title, or such that the vehicle identification number is no longer visible or accessible, in which case the purchasing or receiving secondary metals recycler, used motor vehicle parts dealer, or scrap metal processor shall verify that the seller has reported the vehicles in accordance with this subsection. Such verification may be in the form of a certification from the seller or contract between the seller and the purchasing or receiving secondary metals recycler, used motor vehicle parts dealer, or scrap metal processor which clearly identifies the seller by a government issued photograph identification card, or employer identification number, and shall be maintained for a period of not less than two years.
  - (E) The information obtained by the department in accordance with this subsection shall be reported to the National Motor Vehicle Title Information System, in a format which will satisfy the requirement for reporting this information, in accordance with rules adopted by the United States Department of Justice in 28 C.F.R. 25.56.
  - (F) The information obtained by the department in accordance with this subsection shall be made available only to law enforcement agencies, and for purposes of

311	canceling certificates of title, and shall otherwise be considered to be confidential
312	business information of the respective reporting entities.
313	(G) All records required under the provisions of this Code section shall be maintained
314	for a period of two years by the reporting entity and shall include a scanned or
315	photocopied copy of the seller's or seller's representative's driver's license or state
316	issued identification card."
317	PART III
318	SECTION 3-1.
319	(a) Except as provided in subsection (b) of this section, this Act shall become effective
320	July 1, 2012, and shall apply to all offenses committed on or after such date.
321	(b) Part II of this Act shall become effective only upon Section 21(b) of Ga. L. 2011, p. 355
322	becoming effective.
323	SECTION 3-2.
324	All laws and parts of laws in conflict with this Act are repealed.